A SYNOPSIS STATEMENT

ON

ANALYSIS AND DEVELOPMENT OF FEEDBACK MECHANISM FROM PRISONERS FOR UPGRADATION OF POLICIES,SYSTEM ANDS CURRICULUM OF LAW PROGRAMS

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''बेटी बचाओ, बेटी पढ़ाओ''

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INTRODUCTION

Modern criminal jurisprudence recognizes that criminals are not born but made, since when a crime occurs it takes place due to various factors like social & economic. Whenever a criminal activity takes place it is not always necessary that the person committing the crime has always a prior intention to commit the crime but the person can also move on the path of

crime again after he is been released from prison. The age old penological approach held imprisonment i.e. custodial measures to be the only way to curb crime but the modern penological approach has ushered a new form of sentencing whereby the need of society are to be balanced with the interest of accused by way of admonition, probation, parole, open jails, imposition of fines, community service etc.The criminal justice system is slowly progressing towards reformative approach rather than retributive approach which was based on the idea of revenge. Giving imprisonment to the first time offenders, juveniles, petty offenders & sometimes hardened criminals also, makes no good as there are chances of getting in contact with hardened offenders and go their way. Putting the person to prison reduces the chance of getting reformed and again adjusting in the normal society.

The custodial measure and institutional incarceration present various important problems like increasing the dependence of offender, decreasing the capacity to readjust to the normal society after release from the prison, involving with the gangs.Other inevitable consequences that flow from prisonisation of offender are loss of job, separationfrom family and contamination due to association with other professional delinquents,

A prison is considered as a place in which individuals are physically confined and are deprived of personal freedom to a certain extent. Prison is an integral part of the criminal justice system of any country. Prisons may be meant exclusively for adults, children, females, convicted prisoners, under trials etc. The objective of imprisonment may vary from country to country. It may be: a) Punitive b) Deterrence c) Reformative d) Rehabilitate, or e) ExpiatoryThe primary purpose of imprisonment is to protect society against crime. Punitive methods of treatment of prisoners alone cannot achieve the goal of reformation of prisoners. Various human rights approaches and human rights legislation as well as judiciary have facilitated a change in the approaches of criminal justice system. The United Nations has also provided certain guidelines for the treatment of prisoners. The State is under legal obligation for protecting its subjects and for the compliance of which citizens are given certain basic privileges recognized by the Constitution of India and other legislations. However, the enhancement of rights of the prisoners raises a question as to what extent it is viable under Article 21 to incorporate within its ambit, the access to conjugal rights to the prisoners within the jail premises. Moreover, what about the rights of the victims upon whom they had committed the offence and to what extent the arena of rights of the prisoners can be enhanced in the garb of human rights so as not to violate the human rights of the victims who were the

primary sufferers of the offence committed upon them. Prisons have existed in most societies for many centuries. Usually they have been places where individuals were detained until they underwent some legal process. They might be waiting to go on trial, or for execution or exile, or until a ransom, a fine or a debt is paid. Occasionally, individuals who posed a particular threat to the local ruler or state might be deprived of their liberty for a long period. The use of imprisonment as a direct punishment of the court was introduced to Western Europe and North America in the 18th century. It has spread gradually to most countries, often as a result of colonial oppression. In some countries, the concept of imprisoning human beings does not fit easily with the local culture. Over the years there has been a lively debate e, which is still going on, about the purposes of imprisonment. Some commentators argue that it should be used only to punish criminals. Others insist that its main purpose is to deter individuals who are in prison from committing further crimes after they are released, as well as to deter those who might be inclined to commit crime. Another perspective is that people are sent to prison to be reformed or rehabilitated. That is to say, during the time they are in prison they will come to realize that committing crime is wrong and will learn skills which will help them to lead a law-abiding life when they are released. Sometimes it is argued that personal rehabilitation comes about through work. In some instances, people may be sent to prison because the crime they have committed shows that they present a grave threat to public safety. In practical terms, the purposes of imprisonment will be interpreted as a combination of some or all of these reasons. The relative importance of each one will vary according to the circumstances of individual prisoners. However, a more and more widely held opinion is that prison is an expensive last resort, which should be used only when it is clear to the court that a non-custodial sentence would not be appropriate.The detention of individuals who are awaiting trial is a matter of special concern. Their situation is quite distinct from that of people who have been convicted of an offence. They have yet to be found guilty of any offence and are therefore innocent in the eyes of the law. The reality is that they are often held in the most restricted conditions, conditions that in some cases are an affront to human dignity. In a number of countries, the majority of people who are in prison are awaiting trial. The proportion sometimes is as high as 60 per cent. There are particular problems with the way pretrial prisoners are treated and when the access that they have to lawyers and to their families is determined not by the prison authorities, but by another authority, such as the prosecutor. The main human rights issue of under trials is delay in trial of cases. Right to speedy trial is a right to life and personal liberty of a prisoner guaranteed under Article 21 of the Constitution, which ensures just, fair and reasonable procedure. However, eighty per cent

prisoners are under trials, and some of them are not released even after granting bail as they are unable to furnish surety bonds due to lack of money or verification of addresses, as some prisoners don't have houses. The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. It is therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that delay in trial by itself constitutes denial of justice which is said to be justice delayed is justice denied. It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary. The right to speedy trial has become a universally recognized human right. Human rights are those rights that accrue to one because they are human beings. These rights are equal and inalienable to all human beings.1 The United Nations Charter in its preamble sets out as one of the objectives of the community of nations 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small' the effect of which is to illustrate the weight attached to fundamental rights and dignity.2 Since the coming into force of the Charter, states have been called upon to conclude international human rights instruments setting out these rights in detail,

and by ratifying the conventions, states undertake to respect and ensure respect for these rights without discrimination. The Universal Declaration on Human Rights adopted in 1948 together with the 1966 International Covenant on Economic Social and Cultural Rights and International Covenant on Civil and Political Rights constitutes the International Bill of Rights. This instrument, the UN makes plain, 'continue to be a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms'3 The ultimate goal of international human rights standards is that they are translated into the day to day lives of individuals, thus creating an appreciation and valuing of a human rights culture. The success or failure of any international human rights system should be evaluated in accordance with its impact on human rights practices on the domestic (country) level. The conceptual battle is over and the focus has shifted to the implementation of human rights.4 To achieve this goal there are various ingredients such as

state adherence to human rights treaties; implementation of human rights obligations in domestic law; a domestic legal system that provides comprehensive substantive and procedural human rights laws; effective and accessible state institutions where individuals can obtain redress for human rights breaches, such as independent courts and national human rights institutions; a lively NGO community; and a population that has developed a strong human rights culture.5 These elements are complementary and it is their concerted efforts that effect on the whole, the level of the state's respect for human rights. National Human Rights Institutions (National Institutions, NHRIs) have evolved to bridge the gap between governmental and nongovernmental action. The gap exists between the efforts a government makes to promote and protect human rights and the expectations of the non-governmental sector that is often limited in its ability to hold government accountable. In states where there are high levels of rights violations the existence of a national institution can at least 'create an official space for a human rights discourse' amongst all interested parties. These institutions are attractive because they are: autonomous national bodies, such as a human rights commission, that function independently of other governmental agencies to work for laws and practices concerning human rights to be effectively applied by the government./

PRISONERS In an ordinary sense "Prisoner" means a person confined or kept in custody. As per the definition of the Oxford Dictionary Prisoner means "a person who is being kept in prison6 " Kinds of Prisoners As per Section 3 of the Prisons Act, 1894, Prisoners are classified into three groups. They are Criminal Prisoner, Convicted Criminal Prisoner and Civil Prisoner. "Criminal Prisoner" means any Prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction or by order of a Court - Martial. "Convicted Criminal Prisoner" means any Criminal Prisoner under sentence of a Court or Court - Martial and includes a person detained in prison under the provisions of Chapter VIII of the Criminal Procedure, 1882 (X of 1882) or under the Prisoner's Act, 1871 (V of 1871). "Civil Prisoner" means any prisoner who is not a Criminal Prisoner. Prisoners may also be broadly classified according to the term of imprisonment, ailment, age, sex, political cause, cases of civil nature and cases of preventive arrest viz. Remand prisoner, Under - trial prisoner, Convicted prisoner, Short term prisoner, (Rigorous Imprisonment), Long term prisoner (Rigorous Imprisonment), Prisoner sentenced to Simple Imprisonment, Prisoner sentenced to life, Prisoner sentenced to death, Leper prisoner, Mentally ill prisoner, Juvenile in conflict with law, Adolescent offender, Adult prisoner, Male prisoner, Female prisoner, Political prisoner, Civil prisoner, Detenue. TREATMENT OF

PRISONERS Crime is an outcome of the diseased minds and jail must have an environment of hospital for treatment and care. One should bear in mind that “prisoner is a ward and not the slave of the State 7 ”.The Prisoners are sent to prison “not for punishment but as punishment.” But unfortunately prisoners are treated as if they have been sent to prison not only “as punishment” but even “for punishment.” The process of treatment should begin right from the time of admission of the inmate in prison. A newly admitted inmate faces a number of problems of adjustment with new environment. Study of the individual inmate, initial classification of prisoners, their care and welfare, firm and positive discipline in prison constitute essential pre-requisite for planning balanced treatment programme. The regimented routine of institutional life, the pattern and time of prison food and anxieties about health, family and domestic problems such as land, litigation etc., keep bothering him. He attempts to seek adjustment with inmate group and prison personnel and with the work allotted to him. If these urgent needs and problems are explored, identified and attended to by prison personnel sympathetically and with understanding, the inmate will have a lot of relief. This will also enable prison personnel to establish a rapport with the inmate and secure his co-operation in the effective implementation of treatment programme. Therefore treatment of offender in prison should be looked at from three angles; 1. the essential prerequisite for carrying out appropriate treatment programme conducive to rehabilitate the offender 2. variety and contents of treatment programmes and 3. evolution of the effectiveness of treatment programme. Looked from these angles, the elements and components of treatment programme in prisons can be identified as follows:- A relaxed positive and constructive atmosphere in the institution, Good personnel – inmate relationship based on mutual trust and confidence, Study of the individual inmate; Initial classification, Care and welfare of inmate, Firm and positive discipline, Attending to the immediate and urgent needs and problems of inmates, Attending to the long term needs, Planning a balanced and diversified training and treatment programme consisting of diversified education, work, vocational training, recreational and cultural activities, etc.,. Helping the inmate to maintain continuity of his conduct with his family, community and outside world. A good system of incentives for self-discipline such as remission, leave, transfers to semi-open and open institutions and pre-mature release, individual guidance, counseling and case work, group activities, group guidance and group work, social implantation of proper habits, attitudes and approaches, preparation for social living, Psychotherapy, Supportive therapy, personal positive influence of institutional personnel, periodical review of progress, reclassification, review of sentence and pre-mature release, planning for release, pre-release preparation, after care and follow-up

and community participation .

Review of Literature

Fundamental rights form the core of human rights in India. They are the basic rights of the citizens which cannot be taken away under any circumstances. The law of the country also guarantees some of these rights to the prisoners too like Article 14, 19, 21. However, it cannot impose the fundamental rights in its full panoply to the advantage of the prisoners. Giving prisoners Right to Fair procedure forms the soul of Article 21. Levying reasonableness in any restriction is the essence of Article 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14. All of these statements are supported by various judgments of the lower courts and the higher court. Some of them are listed below.

Case Laws

1. In the case of the *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, the court held that a prisoner is entitled to all the fundamental rights unless curtailed by the constitution.
2. In *State of Maharashtra v. Prabhakar Pandurang Sanzgir*, the Supreme Court stated that the mere fact that someone is detained cannot deprive one of his fundamental rights and that such conditions are not to be extended to the extent of the deprivation of fundamental rights of the detained individual. The Court further ruled that every prisoner retains all such rights that are enjoyed by free citizens except the one that is lost necessarily as an incident of confinement.
3. In *Charles Sobaraj v. Supdt Central Jail Tihar*, it was ruled that all the rights available to prisoners under Articles such as 14, 19 and 21 are though limited but cannot be said to be static. They are bound to or rather will rise to new human heights when challenging circumstances arise.
4. In *Francis Corahe Mullin v. The Administrator, UT Delhi* Justice Bhagwati observed the rules laid down by Justice Douglas and Justice Marshall :

Mr Justice Dougals reiterated his thesis when he asserted: "Every prisoner's liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system requires procedural

safeguards." Mr Justice Marshall also expressed himself clearly and explicitly in the same terms: "I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court's holding that the interest of inmate."

Right to Privacy

The Right to Privacy is one of the very significant rights available to the citizens of India. They form an intrinsic part of Right to Life and Personal Liberty under Article 21 of the Indian Constitution. They have also been made applicable to the prisoners and convicts through various judgements passed by courts over the years.

In India, however, this right is perhaps the most violated. The right to privacy in respect to search and seizure was first raised in the 1950s, where the apex court ruled that search and seizure cannot be seen as violative of Article 19 (1)(f) of the Indian constitution and a mere search by itself does not nullify or harm an individual's right to property. Even if search or seizure affected such right then its effect is temporary and is to be construed as a reasonable restriction on the rights of individuals.

Right to Privacy in recent times

The concept of right to privacy has evolved over the years. In recent time, its scope has been widened to benefit people in the most possible way. A distinction between physical privacy and mental privacy is also being drawn.

In the case of *Rohit Shekha v. N.D Tiwari***,** the court held that nobody should be compelled to be subjected to any techniques in question at any circumstances, even when it is in the context of an investigation in a criminal case. Proceeding with such acts would result in an unwarranted intrusion into an individual's personal liberty. It is equally important that adequate space is provided for the voluntary administration of the impugned techniques in the context of criminal justice on conditions that certain safeguards are in place. The court also did a brief examination of the jurisprudence that permits compulsory testing or involuntary drawing of samples and stated that judicial precedents in such cases emerge in criminal prosecution related to serious offences like those involving narcotic substances, manslaughter, murder or sexual offences. In all of these cases, the court has carefully

weighed the interest of justice in the context of public policy and privacy of an individual while examining the permissibility of compulsory testing.

Right to Privacy of prisoners and their spouses

In *Rahmath Nisha v. Additional Director General of Prisoner and Others*, the accused was given 10 days leave to visit his wife. But, due to serious illness, his wife was transferred to the hospital in ICU by the time he reached home. However, the police escort that accompanied the accused refused to let him visit the hospital citing that permission has been granted to visit home only. The Madras Court held that the prisoner should be allowed to visit his wife in hospital and that the meeting between him and his wife should not be monitored.

The court stated that when a prisoner is united with his wife, he might like to hold her the hands of his partner. It's natural that his emotions would find physical expression. Therefore, the right to privacy and dignity of the prisoners should be scrupulously safeguarded. It is also important that the conversation between the prisoner and his partner or spouse should go unmonitored.

Right against solitary confinement and bar fetters

Solitary confinement is a kind of imprisonment in which the convict or prisoner is kept in a different cell with little or no contact from other inmates. In addition to that strict monitoring is done on the habits and behaviour of the person. The idea behind solitary confinement is to teach notorious convicts discipline and provide safety to other inmates from them.

The validity of solitary confinement was considered by the Supreme Court in the famous case of *Sunil Batra v. Delhi Administration* wherein the honourable court highlighted that imposition of solitary confinement is only to be made in exceptional cases where the prisoner is of such violent or dangerous nature that his segregation becomes an utmost necessity. The court also observed that keeping prisoners in bar fetters day and night reduces them to the level of an animal and deteriorates their mental health. The courts, therefore, have presented strong resentment against solitary and stated its confinement as highly dehumanizing and derogatory in nature. They have also held such confinements to be against the spirit of the Constitution of India.

Right to Life and personal liberty

The Hon'ble Supreme Court has repeatedly applied the rule of Article 21 in numerous cases and asserted its significance in several other. It has expanded the connotation of the word "life" given by Field J. in the much-known case of *Kharak Singh v. State of UP*. In the said case, the court ruled that the term "life" connotes more than mere existence like that of an animal. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the other world. It can be said that right to live is not restricted to a mere animal existence. It connotes something more than just the physical survival of a being.

Right to live with human dignity

The right of a human being to live with dignity is protected by the constitution. This right is also given to the prisoners as their mere conviction does not render them inhuman. This right forms a significant part of right to life guaranteed under the constitution of India. The idea behind is that every person's life is precious and irrespective of the circumstances, he should be given a sense of dignity to help him continue living. The courts have enlarged the scope of Article 21 to include this right. Its occurrence could be noted in many cases. Some of them are enumerated below:

Case Laws

1. In the case of *Maneka Gandhi v. Union of India,* the apex court propounded a new dimension of Article 21 wherein it stated that "right to life or live" does not confine itself to mere physical existence but also includes right to live with human dignity.

1. Further, in *Francis Coralie v. Delhi Administration,* while expanding the aforementioned concept, the court held that the word 'life' includes everything that it goes along with it, namely the bare necessaries of the life such as adequate nutrition and food, clothing and shelter over one's head, facilities for reading,

writing (education), ability and opportunity of expressing oneself in diverse forms, moving freely, mixing and commingling with fellow human beings.

2. Thereafter, the apex court in *Pandit Parmanand v. Union of India* expanded the concept of "life" and ruled that the word "life" is not just limited up to the period of death but even after that. Therefore, when a person was executed with the death penalty (as in this case) but the dead body was not lowered even after half an hour, in spite of the fact that the doctor already gave the death certificate, the court held that it amounted to a violation of Right to life under Article 21. It can be concluded that Right to live continues even after death and includes in its ambit the right to proper handling of the dead body or right to a decent burial.
3. The Supreme Court in *State of Andhra Pradesh v. Challa Ramakrishna Reddy* held that the right to life is one of the basic human rights which is guaranteed to every person by Article 21. It is so fundamental that even the State has no authority to violate it. A prisoner does not cease to be a human being even when lodged in jail. He continues to be a human and therefore is entitled to enjoy all the fundamental rights including the right to life.

Right to health and medical treatment

Right to health is an important right. The Constitution of India incorporates provisions guaranteeing every individual the right to the highest attainable standard of physical and mental health. In a series of judgements, the highest court of the land has held that the right to health care is a crucial element of Article 21. Article 21 of the Constitution imposes an obligation on the State to safeguard an individual's life.

In the case of *Parmannd Katara v. Union of India*, the court held that a doctor working at a Government hospital is bound by duty to extend any type of medical assistance for preserving life. In fact, every doctor has a professional obligation of extending his services to the patients (be it anyone) with due diligence and expertise in order to protect his life. Therefore, any legal body cannot intervene to cause a delay in the discharge of obligations and duties cast upon the members of the medical profession. The court also reiterated in *Paschim Bengal Khet Mazdoor Samiti v. State of West Bengal*, that a government hospital cannot deny any patient the right to treatment on the grounds of non-availability of beds. Doing so would

amount to a breach of Article 21 that highlights the 'right to life'. This article imposes strict obligations on the State to make available the necessary medical assistance to an aggrieved person as protection of human life is of utmost significance

The Gujarat High Court in *Rasikbhai Ramsing Rana v. State of Gujarat* held that the right to medical treatment is one of the basic human rights that should be made available to every person. The court further guided the concerned jail authorities to take proper mental and physical health care of the prisoners which were suffering from any type of disease.

The same court, in a *suo moto* writ, issued guidelines to the Central government to equip all Central and District jails with facilities such as ICCU, pathology lab, proficient doctors, sufficient staff including nurses and latest instruments for medical treatment.

Right to a speedy trial

It is very well said that justice delayed is justice denied. Every prisoner has a right to a speedy trial irrespective of the crime he is convicted of. Speedy trial is considered as an integral part of the criminal justice delivery system. Once a person is accused, he must be subject to speedy trials so as to punish him from the crime he committed or absolve him from it, if not proven guilty. No one should be subject to long, pending and tiresome trials as it not only violates the rights of an individual but is considered to be the denial of justice altogether. The right to a speedy trial, therefore, has become a universally recognized human right. Moreover, the right to a speedy trial is also contained under Section 309 of the Code of Criminal Procedure. If this provision of the Cr.PC is followed and implemented in its true spirit, all the grievances and queries of prisoners could be resolved

Case Laws

1. In *AR Antulay v. RS Nayak* the Supreme Court laid down comprehensive guidelines for accused convicted in a criminal case, however, it did not prescribe a fixed time period for the trial of offences. The court said that the right to speedy trial flows from Article 21 and it includes in its ambit all the stages of investigation like inquiry, trial, appeal, revision and re-trial. The court further stated that an accused cannot be denied his right to speedy trial merely on the ground that he did not demand the same. It also reiterated that the time limit of a trial

needs to be decided by keeping certain circumstances in mind such as the nature of the offence, number of accused, number of witnesses, the amount of workload on the court, etc,

The court finally comes to the conclusion in the interest of natural justice that when the right to speedy trial of a convict has been violated the charges of the conviction shall be quashed.

2. Justice S. S. Hasan of the Patna High Court emphatically stated in the case of *Madheshwardhari Singh And Anr. v. State of Bihar* that there would be a day in future wherein it would be realised that a period of less than ten years in delivering justice to a party would be considered as an unjustified delay, thereafter it would be endeavoured and brought down to two years and it would be on that day that justice, in the real sense, would be served. He also pinned his hopes on courts all over the country that they will be conscious towards the right of an indicted person to get speedy disposal of his indictment and also take into consideration the hardship that has been caused to the parties due to such delays which were beyond their control.

Right to legal aid

Legal assistance plays a significant part in the life of an accused awaiting trial or any prisoner or convicts, for that matter. The 42nd Amendment to the Constitution (1976) of India incorporated services of free legal aid as Article 39A under the head Directive Principles of State Policy. Though this article is part of the directive principles of state policy and hence, not enforceable, the principles underlined therein are of utmost importance. It is incumbent upon the State to keep this article in mind while framing rules and regulations for prisoners, criminals or convicts.

The parliament has enacted the Legal Services Authorities Act in 1987 wherein it guaranteed legal Aid. It also directed various state governments to set up Legal Aid and Advice Boards, and frame schemes aiming to provide Free Legal Aid. This was done so that the Constitutional mandate of Article 39-A could be given an effect. If we look into the jurisprudence of Indian Human Rights, it can be said that legal aid is of wider dimension and it is available in civil, administrative or revenue cases other than just criminal cases.

In the case of *Madhav Hayawadanrao Hoskot v. the State Of Maharashtra***,** the three-judge bench of the Supreme Court of India read Articles 21 and Articles 39-A along with Article

142 and Section 304 of CrPC together emphasized that the government of the country is under a duty to aid and provide legal services to the convicted or accused individual.

Justice Krishna Iyer emphatically declared that *"Right to free legal aid is the State's duty and not Government's charity".*

Right against Inhuman treatment

It is the right of every prisoner to be protected against any type of cruel or inhuman treatment. The Supreme Court of India in several cases has highlighted the harsh treatments faced by prisoners and directed state and prison authorities to check and regulate the same. The court also prohibited the use of instruments such as handcuffs, chains, irons and straitjackets in punishing the prisoners. Some other instruments of restraint are permissible but only under certain circumstances. These circumstances are mentioned hereunder:

1. Using instruments of restraint for precaution during the transfer of prisoners against escape, conditional upon the fact that it shall be removed while producing the prisoner before an administrative or judicial body.
2. If the medical officer permits the same on certain medical grounds;
3. In cases wherein it is difficult to prevent a prisoner from self-harm or damaging the property around, the director in consultation with the medical officer and after reporting the higher administrative authority may order the prisoner to be put in instruments of restraint.

The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Case Laws

1. In *Sunil Gupta v. the State of MP***,** the petitioners had voluntarily surrendered themselves. They even refused to bail out and decided to stay in prison for the cause of public good. Even though they were put in handcuffs and taken to court by the escort party. The court expressed that the act done by the escort party was inhuman in nature and violative of Article 21 of the Constitution. The court also

directed the government to take immediate and appropriate action against the defaulting escort part for having acted unjustly and unreasonably in handcuffing the prisoners.

2. In the case of *Kadra Pehadiya v. the State of Bihar*, the court expressed its anger at seeing four petitioners who were merely undertrial prisoners awaiting their trial chained in leg irons. The court ruled that such acts are gross violations of all prison regulations and of the guidelines set by the court in the case of Sunil Batra. The court thereafter directed the Superintendent to remove leg irons from the feet of the four petitioners immediately. The court also directed that no convict or undertrial prisoner shall be kept in leg irons except in accordance with the ratio of the decision of Sunil Batra's case.

Right to Education

Right to education is a Fundamental Right and therefore it should be given to every citizen of the country. Along with education, it is compulsory that the right type of education should be imparted. In *Mohammad Giasuddin v. State of AP*, the court tried to regulate the manner of work and education provided to the inmates of the jail. It directed the state government to look into the nature of work and education given to the prisoners and check that the work provided is "not of a monotonous, mechanical, intellectual or like type mixed with a title manual labour…". The court further stated the facilities of liaison through correspondence courses must also be given to the prisoners who are interested in doing higher or advanced studies. Moreover, basic learning such as tailoring, embroidery, doll-making should be extended to the women prisoners. In addition to that, the well-educated prisoners should be given the opportunities to engage in some sort of mental-cum-manual productive work.

Right to receive books/magazines

In *George Fernandes v. State*, the court took cognizance of the case wherein the Superintendent of the Nagpur Central Jail had fixed the number of books to be allowed to the inmates to be 12. However, the power to take such decisions was not vested in him, though being a superintendent he could disallow a book terming it as "unsuitable". This was stated in consonance with the Bombay Conditions of Detention Order, 1951.

The court further added “all the restraints on liberty, that no knowledge, learning and pursuit of happiness is the most irksome and least justifiable. Improvement of mind cannot be thwarted but for exceptional and just circumstances. It is well known that books of education and universal praise have been written in prison cells.”

Right to publication

The Supreme court held in a case wherein the prisoner was not allowed to read a scientific book that there was nothing in the Bombay Detention Order, 1951 that prohibits a prisoner from writing or publishing a book. It stated that the book prisoner wanted to read was merely a work of science, (“Inside the Atom”) and it could not be regarded as detrimental to public interest or safety as provided under the Defence of India Rules, 1962.

Further, in *State of Maharashtra v. Prabhakar Pandurang Sanzgir* wherein an accused detained under preventive detention was not allowed to hand over his unpublished book to his wife for publication, the court termed such an act as violative of Article 21.

In yet another case of *Rajgopal v. State of Tamil Nadu*, the Supreme Court held that there was no authority in law that could priorly deny the permission to publish the autobiography of Auto Shanker (prisoner) under the fear or impression that it would cause defamation of prominent IAS and IPS officers. The concerned officials can take action after the publication and only if the publications are false.

RIGHTS OF PRISONERS:CASE LAWS Prisoners are basically human beings. They being, human beings are to be entitled to human rights and constitutional rights except those that are to be necessarily denied because of their condition of imprisonment. The State is under a Constitutional obligation to honour and to protect their rights, particularly their right to live with human dignity. The accused, under- trials, suspects and convicts do not cease to be human beings just because they are so named. Hence their rights as human beings are to be protected and respected. The fundamental rights, which are available to the prisoners, are not defined in the Indian Constitution in particular. The Judiciary, however, through the process of Judicial Activism has expanded the scope of various freedoms guaranteed to individuals in relation to prisoners by expanding the horizons of article 21 of the Indian Constitution

and)also taking into consideration the relevant provisions of International Covenants formulated for monitoring and supervising the prisoners. A.K.Gopalan vs. State of Madras (1950 In the beginning, the Supreme Court was not responsive to the protection of the rights of the prisoner. It examined the issue immediately after the commencement of the Constitution. It expressed the view that the prisoners are non-personsand fundamental rights under the Constitution are not available to them by their being incarcerated. The Court declared that a person loses his right to personal liberty by way of detention under valid law enacted by a competent legislature and so long as he remains under such detention, he ceases to be entitled to enjoy his other fundamental rights.11 State of Maharashtra vs. Prabhakar Pandurang Sangzgiri (1966) The respondent was detained under the Defense of India Rules (1962). While under detention in jail, he wrote a book of scientific interest in Marathi called 'Anucha Antarangaat' (Inside the Atom), but was not allowed to publish it by the prison authorities. The Bombay High Court issued a writ allowing Pandurang to publish the book. The State Government in an appeal to Supreme Court argued that freedom to publish was only a component part of speech and expression and the detenue ceased to be free in view of his detention, and hence he could not exercise his freedom to publish his book in view of an observation made in A.K.Gopalan case. Without going into the question regarding the relative positions of Articles 19 and 21, the Court observed that the view held in Gopalan case wasnot the last word on the subject. The Court held the view that the right to 'Personal Liberty' under Article 21 included the right to write book and get it published and the refusal by the State Government to send the petitioner's manuscript for publication, infringes his personal liberty manifested under Article 21. The Court found that there was nothing in the Bombay Detention Order 1951, prohibiting a detenue from writing or publishing a book and when a detenue exercises his right, its denial without authority of law, would violate Article 21. Dismissing the appeal of the State, the court further held that the book being the one on the subject of scientific interest which would not otherwise be detrimental to public interest or safety as envisaged under the Defense of India Rules (1962).9 Charles Chopra vs. The State of Bihar (1978) In Charles Chopra's case the Supreme Court pointed out "prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement.10 Sunil Batra vs. Delhi Administration (1978) Sunil Batra (ii) vs. Delhi Administration (1980) In Sunil Batra cases, while interpreting Articles 14, 19 & 21, the Supreme Court has assured many substantive rights to the prisoner. The extended dimension given to article 21 has proved to be multi-dimensional. The right to life enshrined in Article 21 has been liberally interpreted as to mean something more than survival and mere animal existence. It, therefore, includes all those aspects of which that go to make a man's life

meaningful, complete and worth living. This aspect of judicial pronouncement leads to emergence of prisoner's right. The significant areas of extension were the rights not to be handcuffed, put on bars and solitary confinement unless absolutely necessary. The right against custodial torture, right to speedy trial, right to counsel, proper condition of detenue, right to meet relatives, friends and lawyer, right to wages and even the right to compensation for violation of rights. Beginning with Sunil Batra case, the Court has armed itself and embraced the jurisdiction to attend the complaint of the prisoners where their rights either under the constitution or under the law are violated.

Nilabati Behera vs. State of Orissa (1993) In Nilabati Behera vs. State of Orissa, the Supreme Court observed that "it is axiomatic that convict prisoners or under-trials are not denuded of fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation ofthe state to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. This precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convict, under-trials or other prisoners in custody, except according to the procedure established by law12 . State of Andhra Pradesh vs. Challa Rama Krishna Reddy (2000) In the case of State of Andhra Pradesh vs. Challa Rama Krishna Reddy, the Supreme Court asserted that even a prisoner has fundamental rights including other human rights. In that case, the claimant and his father were lodged in jail. They requested the police to provide security to them apprehending danger to their life from their opponents. There was failure of police to provide adequate security in spite of being asked. When they were attacked by bomb in their jail cell, the father died and the claimant sustained serious injuries. The suit for compensation was dismissed by lower Court but the High Court awarded Rs.1,44,000 as compensation. In the instant case, while dismissing the appeal filed by the State Government, the Court reiterated; "Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. A prisoner be a convict or under-trial or detenue, does not cease to be a human being.Even when lodged in the jail, he continues to enjoy all fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of a crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights.

Prisoner's Rights and International Covenants The right of prisoners in International Law is found in a number of International Treaties and that too following the two World Wars. Due to the widespread denial of civil rights and liberties on the basis of racial, religious and political discrimination had a profound effect on the international law of prisoner's right. The systematic use of violence including wanton murder and ultimately genocide and use of slave labour, abuse and murder of prisoners of war, widespread deportation and confiscation of property forced a large scale changes that began to occur in all areas of international law including prisoners rights. At present, there are numerous international instruments which lay down codes by which prisoners should be dealt with. The following are the foremost among them.

1. Third Geneva Convention (came into force in 1924 significantly amended in 1949).

2. Charter of United Nations (1945).

3. Universal Declaration of Human Rights (1948).

4. United Nations Standard Minimum Rules for the Treatment of Prisoners (1955).

5. International Covenants on Civil and Political Rights (1966).

6. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

7. Basic principles for the Treatment of Prisoners (1990). 8. Basic principles on the use of Force and Fire Arms by Law Enforcement Officials (1990)

Objectives of the Study:

1. To analyze whether the Constitutional rights of an ordinary citizen which are extended to the prisoners are full- fledged in all aspects, except those that are to be necessarily denied because of the condition of imprisonment.

2. To analyze the necessity of incorporating the rights guaranteed to ordinary citizens under the Constitution which are extended to the prisoners, in the existing relevant statutes, laws, rules, and regulations regarding the management of prisons and treatment and supervision of prisoners.
3. To analyze whether there is any gap between the theory and practice in implementing the Rights of Prisoners in the day-to-day administration of Prisons.
4. To analyze whether it is considered as a mercy or reluctance or denial on the part of the prison authorities in extending the rights to the prisoners.
5. To analyze whether there is sufficient funds in establishing the rights of prisoners in prisons in such matters where the financial commitment arises.
6. To suggest measures and recommendation for the better implementation of the rights of prisoner.

Research Methodology

The research methodology includes the gathering of data and information so that they may be analyzed and solution on the problem stated may be made. This may contain collecting the data by the way of newspapers, articles, books, journals ,interviews,etc.

Hypothesis

Taking into account, the above said objectives, the following hypothesis is formulated: The emergence of Prisoners Rights in India is an offshoot of the Judicial Activism / pronouncement / Judgement by extending the Constitutional Rights multi dimensionally. So, many Prison Reforms Commissions and Human Rights Commissions reiterated the Judiciary's pronouncements on the Prisoners'Rights. Even then, it is considered that there is lacuna in its actual implementation. In order to test the above said hypotheses, the following points are raised and analyzed in detail in the proposed study:

- The spirit of the Judiciary in establishing the Rights of the Prisoners is taken up in the right sense and full vigour and followed in Prison management and treatment of Prisoners.
- The attempts are made to seek amendment in the existing statutes, Manuals and other Laws connected with Prison Administration in order to shower the rights mandatorily.
- The steps have been taken by the Prison Authorities to make the Prisoners aware of their rights and duties.
- The attitude of the Prison Authorities towards the implementation of the rights of Prisoners in Prisons is conducive and humane.
- . The assistance extended by the Centre to the State Governments to improve the Prison atmosphere and living condition of prisoners in Prisons with an ultimate aim of protecting the dignity of prisoners as a human beings is sufficient and properly utilized and that whether improvement is achieved as desired.

CONCLUSION:

Life is not merely animal existence. The souls behind the bars cannot be denied the same. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that Right. A prisoner, be he a convict, does not cease to be a human being. They also have all the rights which a free man has but under some restrictions. Just being in prison doesn't deprive them from their fundamental rights. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights. Supreme Court has gone a long way fighting for their rights. However the fact remains that it is the police and the prison authorities who need to be trained and oriented so that they

take prisoner's rights seriously. Thus we see that there is no doubt that it is the democratic legitimacy which characterizes our era. Liberty and freedom are the elements of prisoner's human right and democracy. In so far as developing countries are concerned it has to be observed that must believe in democracy and human rights of prisoners

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